THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 4743 OF 2005

DATED: 23-08-2005

Between

M/s. GMR Industries Limited (Formerly GMR
Technologies and Industries Ltd.,) (Sugar Division),
Sankili, Srikakulam District having its registered
Office at 6-3-866/1/G2, Green Lands, Begumpet,
Hyderabad – 16, rep., by its Director & CFO
Mr. V.K. Rao Ch.

..... PETITIONER

And

The Asst. Commissioner of (CT) Intelligence,
Vijayanagaram.

..... RESPONDENT

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ORDER: (per Sri B. Sudershan Reddy, J)

The petitioner prays for issuance of a writ of Certiorari calling for the records pertaining to the impugned assessment order passed by the sole respondent in reference No. 2536/2002-2003 under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act') dated 04-02-2005 as illegal and arbitrary being contrary to the provisions of the Act and without any authority of law.

The petitioner is a public limited company carrying on business in manufacture and sale of sugar and its by-products and registered as a dealer under the provisions of the Act as well as the Central Sales Tax Act, 1956 for the assessment year 2002-2003 and paid tax accordingly. The petitioner claims to have effected inter-state sale of molasses to various dealers in other States against declaration in Form 'C' and has collected tax at the rate of 4% and remitted to the Department.

Be it as it may, the respondent herein issued show cause notice dated 11-01-2005 served upon the petitioner on 19-01-2005 both under the provisions of the Act as well as the Central Sales Tax Act, 1956, proposing to add a turnover of Rs.5,09,90,390/- to the APGST Assessment exigible to tax at the rate of 20% under Entry 55 of the First Schedule to the Act and to delete similar turnover under the Central Sales Tax Act, 1956 on the ground that the said turnover does not represent inter-state sale. The petitioner filed a detailed reply *inter alia* contending that the transaction in question is inter-state sale which falls under Section 3 of the Central Sales Tax Act, 1956 and exigible to tax only at the rate of 4% against Form 'C' declarations. It was also contended that the goods were moved against purchase orders to other States in pursuance of a contract of sale and the said transaction qualifies as inter-state sale under Section 3 of the Central Sales Tax Act, 1956 exigible to tax at the rate of 4% against Form 'C' declarations. It is asserted that the petitioner relied upon the judgment of the Supreme Court in ***M/s. Balabhagas Hulaschand Vs. State of Orissa*** in support of the contention. The requisite documents in support of the contention were also filed along with the reply.

The gravamen of the complaint in the instant writ petition is that the respondent without even adverting to the contents of the reply and the documents made available along with the said reply, passed the impugned order dated 04-02-2005 served on the petitioner on 16-02-2005. In the affidavit filed by the petitioner, it is *inter alia* stated that the respondent herein has extracted the objections filed by it for the assessment year 2001-2002 as it is in the assessment order for the assessment year 2002-2003, thereby reflecting non-application of mind to the facts. The order, according to the petitioner, is contrary to the principles of natural justice. It is contended that the respondent deliberately ignored the binding precedent cited by the petitioner in support of its case.

The fact remains that the petitioner preferred appeal against the said order which was returned with the objection that the original impugned order was not annexed to the memorandum of grounds of appeal and also the petitioner failed to deposit 12½% of the disputed tax, as is required in law. The petitioner instead of depositing

12½% of the disputed tax before the respondent herein claimed for adjustment, which was not considered. It is under these extraordinary circumstances, the petitioner had chosen to file the present writ petition.

We are required to notice that the respondent herein passed two separate orders, one for the assessment year 2001-2002 against which the petitioner preferred an appeal before the appellate authority and the appellate authority having considered the appeal on merits allowed the same and accordingly set aside the order passed by the respondent – assessing authority.

Learned counsel for the petitioner, Sri Bhasker Reddy invited our attention to the order passed by the appellate authority finding fault with the view taken by the respondent – assessing authority. Learned counsel made an attempt to lay emphasis on certain observations made by the appellate authority while disposing of the appeal about which we do not propose to express any opinion whatsoever. The fact remains that the very appeal filed by the petitioner for the assessment year 2001-2002 has been allowed by the appellate authority, which is binding upon the respondent – assessing authority. The contentions urged in the appeal and the issues raised in the writ petition are more or less similar about which we do not want to express any final opinion.

It is in the background of these peculiar facts and extraordinary circumstances, we consider it appropriate to set aside the impugned order passed by the assessing authority and remit the matter for fresh consideration in accordance with law. The respondent – assessing authority shall duly take into consideration the objections preferred by the petitioner and the case law cited as well as the documents made available for the perusal of the authority. It is needless to direct the assessing authority to bear in mind the observations and the ratio of the order passed by the appellate authority in the appeal preferred by the very petitioner for the assessment year 2001-2002. There shall be an order accordingly.

The impugned order is accordingly quashed. The Writ Petition is allowed to

the extent indicated hereinabove. The assessing authority shall dispose of the proceedings within a period of ten weeks from the date of receipt of a copy of this order.

(B. Sudershan Reddy, J)

23..08..2005

(Ramesh Ranganathan, J)

ks/msv